

RULE XII.
Examination Administration Rules and Policies;
Violations of Examination Administration Rules and Policies

[Proposed additions are underlined and deletions have been lined through.]

Section 1. Examination Administration Rules and Policies.

Applicants are expected at all times to maintain a professional attitude toward other applicants, staff, proctors and other examination personnel. Conduct that results in a violation of security or disrupts the administration of the examination, which includes but is not limited to, carrying unauthorized items into the examination room, writing or typing after time has been called, looking at another applicant's papers, talking while the examination is in session, being abusive to other applicants, staff, proctors and other examination personnel may result in notice to the Committee of a violation of examination rules or policies, or, in extreme cases, dismissal from the examination test center.

Section 2. ~~Unintentional~~ Violations of Examination Rules and Policies.

~~In those instances where an examination applicant is deemed to have inadvertently or unintentionally violated Committee examination rules, the applicant may be reasonably sanctioned. Sanctions may be imposed only after notice to the applicant. The record of sanction imposed for inadvertent or unintentional violations may be maintained by the Committee for statistical purposes, but the record shall not be construed as adversely reflecting on the applicant's moral character. An applicant who has been notified that sanctions will be imposed on him or her may request that imposition of sanctions be reconsidered, and for good cause shown, the Committee or a designated subcommittee may remove the sanctions.~~

~~Section 3. Intentional Violations.~~

(a) In those instances where an examination applicant is suspected of having intentionally violated Committee examination rules or policies, the Committee ~~shall~~ will complete an inquiry within forty-five (45) days of its first meeting subsequent to the examination during which the violation is suspected to have occurred. If from that inquiry it appears that a ~~n intentional~~ substantive violation did occur, the Committee ~~shall~~ will determine what action will be taken and the Senior Executive, Admissions, or his or her designee, will notify the applicant within thirty (30) days of conclusion of the inquiry, notify the applicant of the results of its inquiry and shall will inform the applicant of the proposed sanction. Proposed sanctions may include, but are not limited to, directing that the applicant receive a total score of zero for the examination, for a particular session or question, and/or forwarding the record of the incident and action of the Committee to the Moral Character department for consideration when determining whether the applicant is of good moral character. and that At its discretion, the Committee may determine to adopt guidelines for the handling of administrative infractions, which are not considered to be substantive violations.

(b) Pending final resolution of the matter, if the proposed sanction affects the scoring of the examination or a determination of moral character, the actual results of the examination or a decision regarding moral character will be held in abeyance.

~~(c) If~~ the applicant may request a hearing to challenge the Committee's determination that ~~an intentional~~ violation did occur. Notification ~~shall~~ will be sent to the applicant by United States mail, postage prepaid, using the address on record for the applicant at the address set forth on the applicant's examination application. The notification ~~shall~~ will be deemed to have been received by the applicant five (5) days after deposit in the mail if the applicant's address is within the State of California or within ten (10) days after deposit in the mail if the applicant's address is outside the State of California but within the United States or twenty (20) days after deposit in the mail if the applicant's address is outside the United States.

~~(d) (b)~~ An applicant who wishes a hearing on whether ~~an intentional~~ violation did occur ~~shall~~ must file a written request with the Committee at the State Bar's Office of Admissions in San Francisco within twenty (20) ~~thirty (30)~~ days of the notification specified in subsection (b), above; provided, however, the Committee may for good cause shown by clear and convincing evidence extend the time within which a request for hearing may be filed if such request for extension is received by the Committee within twenty (20) ~~thirty (30)~~ days of the ~~Committee's~~ notification of the Committee's ~~its~~ determination that a ~~n intentional~~ violation did occur. An applicant who fails to make a timely request for a hearing ~~shall~~ will be deemed to have consented to the Committee's intended sanction ~~action~~, which ~~shall~~ will then be implemented.

Section 3. Rule XII Hearings

~~(a) (c)~~ ~~The Committee shall schedule a~~ A Rule XII hearing will be scheduled within ninety (90) days of receipt of the timely request or within ninety (90) days of permitting a late request to be filed and ~~shall promptly notify the applicant~~ will be promptly notified of the hearing date and location. The hearing ~~shall~~ will be conducted by a panel of three members of the Committee selected by the Chair, one of whom ~~shall~~ will be designated as panel chair by the Committee Chair. The Committee ~~shall~~ will have the burden of establishing by clear and convincing evidence that ~~an intentional~~ violation of Committee examination rules or policy did occur. The applicant ~~and the Committee~~ may be represented by counsel. A representative from the State Bar of California's Office of General Counsel will present the case for consideration by the hearing panel.

(b) The Committee may establish procedures governing Rule XII hearings, which may include, but are not limited to, having the hearing recorded by tape or court reporter, limiting the amount of time available for testimony and allowing for continuances if the need should arise.

(c) In making its decision, the hearing panel will determine either that the original notice and sanctions should be implemented or not, or that different sanctions will be implemented than originally contemplated.

(d) Within ~~thirty (30)~~ ~~forty-five (45)~~ days following conclusion of the hearing, the hearing panel shall will render its Findings of Fact and Recommendation findings and decision. That decision shall The Findings of Fact and Recommendation will be promptly served on the applicant and counsel present at the hearing by a representative from the State Bar of California's Office of Admissions. In response to the Findings of Fact and Recommendation decision of the hearing panel, the applicant may file a request for review in accordance with the provisions of Section 5, Rule I of these rules. If a request for review of the matter by the Committee is not filed within ten (10) days from service of the decision, the decision will become the decision of the Committee.

~~(e) Following adoption of the hearing panel decision by the Committee and if an intentional violation is found to have occurred, the applicant shall be given a total score of zero for the examination and any answers submitted by the applicant which may have been assigned scores prior to the finding of an intentional violation shall be voided. In addition, the record of the committee's inquiry and the results of any hearing held shall be included in the applicant's file for consideration when determining whether the applicant is of good moral character. If an intentional violation has not been found, the scores originally assigned to the applicant's answers will be released to the applicant and a record of the inquiry will not be included in the applicant's moral character determination file.~~

Section 4. Committee Review

(a) Following service of the hearing panel's Findings and Recommendation and the time for filing a request for review by the applicant has expired, the matter will be placed on the Committee's agenda for consideration during its next regularly scheduled meeting for consideration, unless for good cause consideration at a later meeting is appropriate. The record of the inquiry, the hearing panel's Findings and Recommendation, the applicant's request for hearing, and any supplemental materials that the applicant may wish to file, which must be received by the San Francisco Office of Admissions no later than fifteen (15) working days before the scheduled hearing, will be attached to the closed session agenda. The applicant and/or his or her counsel will not be permitted to personally appear before the Committee.

(b) The Committee will consider the materials before it and either adopt the hearing panel's Findings and Recommendation or determine its own.

(c) The Committee's determination will be forwarded to the applicant within ten (10) business days following consideration by the Committee and the sanctions will be implemented, if it is the decision that sanctions should be imposed.